

COCA-COLA BOTTLERS PHILIPPINES, INC., PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER VIRGINIA SON AND GEORGE SOUSA, RESPONDENTS.

G.R. No. 78787, December 18, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

The finding of illegal dismissal committed by the petitioner Coca-Cola Bottlers Philippines, Inc., as stated in the decision of respondent labor arbiter and affirmed in the resolution of respondent commission, is challenged in this petition for certiorari, another in the influx of cases of the same nature elevated to this Court over the past years.

This case involves George Sousa, a route salesman employed by petitioner since February 1, 1978. His services were terminated on October 11, 1983 because he allegedly:

"(1) Effected collections of containers on loan (TCS/COL) accounts from customers without issuing official receipts;

"(2) Failed to remit to the company cash collections and containers retrieved from customers;

"(3) Kited some collections by manufacturing fictitious invoices and signing for them without the knowledge and consent of customers concerned who later disclaimed the signatures appearing in the said invoices; and

"(4) Absented himself without permission in excess of the nine (9) days provided by company rules and regulations.[1]

Private respondent was declared by petitioner to have committed certain irregularities after an investigation conducted by petitioner's district sales supervisor, Salvador F. Bateria, Jr., on March 11, and 14 and on May 23 and 24, 1983. This investigation was conducted in the presence of union representatives during which respondent Sousa was made to explain and present his side regarding the charges against him. On the basis of this investigation, reports dated May 13 and June 28, 1983 were submitted by Bateria to one Jose D. Palma, Jr., petitioner's regional sales manager. In the reports, which were allegedly based on the quarterly audit report made by Bateria, together with the company auditor Frank Butron, Jr., it was stated that the thirteen (13) customers or outlets serviced by Sousa complained of the alleged illegal transactions.[2]

Respondent Sousa, on his part, "claims that he was confronted by management of (sic) the charges without the alleged outlets/customers being present and he denied all the imputations levelled against him. He likewise claims that he was not allowed or given the opportunity to confront the so-called outlets/customers who made the reports despite the understanding had during the investigation held on March 14, 1983 that he would be afforded such opportunity as regards their complaints or reports against him." [3] Private respondent maintains that all his collections were supported by the liquidation invoices which were duly submitted to the cashier of the petitioner, and all the records with respect to the temporary credit sales invoices and cases on loans were in the possession of his supervisor. He also asserts that the charge of absences without permission is groundless. He avers that all the

charges against him were "fabricated by Bateria, as the supposed complaints or reports of customers against him were prepared, filled up and procured by Bateria entirely due to a previous altercation he (Sousa) had with the then project supervisor, Jose D. Palma, Jr., concerning company policy, x x x." [4]

All the foregoing contentions were submitted before Labor Arbiter Virginia Son to whom NLRC-NCR Case No. 11-4999-83 for illegal dismissal filed by private respondent Sousa was assigned. In due course, a decision was rendered on January 24, 1986 by said labor arbiter in the abovementioned case, with the following dispositive portion:

"WHEREFORE, in view of all the foregoing considerations, respondent Coca-Cola Bottlers Philippines, Inc. is hereby adjudged guilty of having dismissed complainant George F. Sousa from the service unjustifiably and unlawfully and is, therefore, ordered, thru its responsible officials, to reinstate immediately said complainant Sousa to his former or equivalent position, preferably to another area of the company not under supervision of his former superiors, Jose D. Palma, Jr. and Salvador Bateria, Jr. with full backwages and allowances and/or benefits under the law and/or collective bargaining agreement, including lost average commission prior to the date of grounding, and without loss of seniority from the time of his illegal termination from work on October 11, 1983 up to and until actually reinstated, and to deposit the monetary award with this Office within ten (10) days from receipt of this Decision. Otherwise, a writ will automatically issue. Further, respondent is directed to post a copy of this Decision at the former place of work of complainant, and to submit a written report relative to its compliance to the immediate reinstatement of complainant Sousa within the same period above specified." [5]

In a resolution dated April 6, 1986, [6] respondent commission affirmed the decision of respondent labor arbiter when the case was elevated thereto by petitioner. A motion for reconsideration having been denied on June 2, 1987, the instant petition for certiorari was filed seeking the reversal of both resolutions.

This petition is not meritorious and the extraordinary writ sought cannot issue.

At the outset, attention should focus on the well-settled and oft-cited rule that the findings of facts of the labor arbiter and respondent commission are generally accorded not only respect but, at times, even the stamp of finality where such findings are duly supported by substantial evidence. [7] Consistent with this doctrinal precept, where the administrative body conversely finds that there is insubstantial evidence to support the allegations of either party, such finding should be accorded equal acceptance.

In the determination of whether or not the quantum of proof was satisfied by a party contending for a particular proposition, the procedure by which issues are resolved based only on position papers, affidavits and or documentary evidence, if agreed upon by the parties may be availed of by the arbiter. It is not violative of the due process clause. [8] The affidavits in such case may take the place of their direct testimony. [9] On the other hand, the labor arbiter may choose, if he deems it necessary, to set the case for hearing on the merits where witnesses may be presented and examined by the parties. In both instances, however, the burden of proving that the termination was for valid or authorized cause rests on the employer. [10]

The administrative tribunal below ruled that petitioner failed to discharge said burden of proof, holding that there is no substantial evidence to support the validity of private respondent's dismissal. We agree. The labor arbiter and respondent commission correctly faulted petitioner for not presenting the requisite evidence in the hearings conducted which were indispensable to sustain its contentions.

Thus, as found by the arbiter and this is not disputed, petitioner failed to present, despite the assurance given by its counsel and Bateria, "the 1) daily liquidation reports; 2) daily tally sheet reports; 3) daily pending sales reports on the dates in question, inclusive of credit and liquidation invoices; 4) daily summary reports for the

dates specified in the invoices; 5) tally sheet clerk reports; 6) finance/accounting reports on current and overdue accounts on monthly basis from January 1982 to February 1983; 7) four bounced checks of customer Paulino; 8) cashier's bluebook on returned checks of Paulino from January 1982 to February 1983; and 9) all the invoices in possession of his supervisor, witness Bateria." [11] These documents could definitely have shed light on, and thereby ascertain the truth of, private respondent's claim that all his transactions were in order.

If it is true that the records are incomplete or had been tampered with through acts ascribable to private respondent, the production thereof would undoubtedly help in substantiating the position of petitioner, since unauthorized spoliation or elignment of evidence is always held against the one responsible therefor. Thus, respondent Sousa having claimed to have issued receipts or turned over the payments to the company, despite the denial of the customers in their affidavits, [12] the production of the pertinent company records was definitely called for. We cannot but view with doubt the reason for such omission by petitioner considering that it was in total and exclusive control of such records and could have easily presented the same before the arbiter. The unfavorable presumption that such records if produced would be adverse to petitioner irresistibly suggests itself. [13]

Another vital document which was not presented was the quarterly audit report although its importance and significance is obvious. As respondent labor arbiter noted, "(f)rom this testimony of witness Bateria, it is, therefore, clear that the charges of irregular transactions which were subject of the two (2) reports (Exhs. '9' and '14'. Folio 118-122, id.) submitted to Jose D. Palma, Jr. arose not from the complaints/reports of the different customers/outlets of the company but from the quarterly audit report allegedly conducted by Bateria and Butron, and the statements contained in the two reports, together with the supporting documents." [14]

Aside from the non-presentation of the necessary documentary evidence, petitioner also chose not to call any of the complaining customers during the proceedings. While, in certain cases, the affidavits of the witnesses may suffice, there are cases where mere affidavits, being actually hearsay and untested by cross-examination, are not enough to satisfy the quantum of proof required by law, especially where the statements of the affiants are controverted, and the labor arbiter should properly require the presentation of testimonial evidence. The party who opts not to present his witnesses under such circumstances must suffer the consequences. This last situation obtains in the present proceeding and the case of customer Lilibeth Sarol may be cited *exempli gratia*.

It appears that Sarol denied the accounts covered by Invoices Nos. 47261 and 47262, dated March 30, 1981, for the reason that both accounts had already been liquidated but no liquidation receipts were issued, thus making it appear that said invoices were fictitious. Respondent Sousa denied the charge stating that he was then grounded for one (1) month and a relief salesman, Butch Basa, took over his route. According to private respondent, Sarol stopped patronizing the company's products because of a heated argument between her and Basa. In addition, Bateria was reminded by Sousa that when they visited the canteen where Sarol was the concessionaire, they found the empty bottles which were allegedly returned by said customer to liquidate her accounts. [15] It was, therefore, obvious and imperative for petitioners to present not only said customer but also Butch Basa to disprove private respondent's allegations, but petitioner, for reasons of its own, preferred not to do so.

The same is true with respect to the other customers whose statements made in their respective affidavits should have been substantiated by their testimony. Worse, the absence of opportunity to confront these complaining customers is a circumstance that undoubtedly weakens petitioner's position, considering that, whether objected to or not, hearsay evidence has no probative value, [16] especially where the same was challenged and remains unexplained. Thus it was observed by respondent labor arbiter that "(a)s shown during the March 14, 1983 investigation, Sousa was even asked by investigator Bateria if he was willing to meet the particular customers who made the complaint against him and there was a positive answer made. As borne out by the records, there

was not a single instance during the investigation where Sousa was allowed to meet or confront any of the alleged complaining customers. In fact, he was refrained (sic) by Baterina to conduct by himself a way to arrive at the truth as to how the customers could have denied their accountabilities with the company (Ans. 63, folio 47, id.). This will totally debunk respondent's allegation that complainant Sousa 'x x x' was given every opportunity to meet face-to-face all the customers and outlets x x x' relative to his irregular transactions with them." [17]

Coming now to the charge that Sousa incurred excessive absences without permission, we find that the labor arbiter is correct in saying that the only semblance of evidence which gives the impression that Sousa had incurred absences without permission was an alleged certification signed by Baterina and three other co-supervisors, namely, Oscar Crisostomo, Mateo Medina and Rolando Pacana, Jr. However, the certification cannot be given credence because it is a mere xerox copy bearing no date and was apparently signed after the investigation of May 24, 1983. The arbiter also correctly noted that the supervisors could not have certified that Sousa was absent on March 7, 26, and 31 and May 14, 1983 because the certification itself reveals that they were not on duty on said dates.[18] For his absences on January 27, 1983 and February 1, 1983, Sousa explained that he submitted a personal leave authority for emergency leave of absence for personal reasons, for which purpose Baterina personally furnished the leave form. He denied being absent without permission on February 21, 1983 since being grounded at that time, he did not go out on his route.[19]

Neither can we disregard the various circumstances that contradict or cast doubts on the charges made by petitioner. Particularly, the records reveal that:

"x x x while he (Sousa) was at that time on grounded status and while the investigation of the charges against him for illegal transaction was in progress, specifically during the dates, to wit: March 11, 14, May 23 and 24, 1983, his supervisor and investigator, Salvador Baterina Jr., had already prepared and submitted on May 13, 1983 a written report to the manager, Jose D. Palma, Jr., together with the denials/confirmations of the different customers (Exhs. '2', '4' and '5', Folio 65, 67 and 72, id.). A glimpse of said denials/confirmation of said customers, which are confirmation slip and affidavit forms, will show the dates 'March 11, 1983', which clearly support the assertion of Sousa that they were prepared and procured by his supervisor (Baterina). And a further glance below said documents will reveal that they appear to have been prepared and secured on March 11, 1983 but were signed by said customers concerned on different dates, which were March 14, 15 and 16, 1983, and notarized only on one date, July 13, 1983 about four (4) months after the investigation and submission of the two reports (Folio 111 and 121, id.). Even the certification secured on March 14, 1983 from AUFFECCA appeared to have been notarized on July 13, 1984 (Exh. '3', folio 71, id.). x x x

"The second report, dated June 28, 1983 (folio 121, id.), will further unmask the devious plan of Sousa's superiors, which shows that while on said date he (Sousa) was recommended for dismissal, they waited up to October 11, 1983, or after three months and thirteen days, to execute the same, thus prolonged the anxiety and agony of Sousa (folio 4, id.). Whether Sousa's case was reviewed by respondent's legal department and his dismissal bears its imprimatur, witness Baterina does not know (Tsn, pp. 22-25, August 13, 1985)."[20]

We, therefore, find no basis for the reversal of the decision of respondent labor arbiter and the resolutions of respondent commission. Even granting ex gratia argumenti errors of judgment on the part of public respondents, the same are not correctible by certiorari as they neither involve jurisdictional defects nor grave abuse of discretion.

However, in line with present case law, the award of backwages to private respondent should not exceed three (3) years thereof at the rate which he was being paid at the time of his dismissal, and without any qualification or deduction.

WHEREFORE, as thus modified, the questioned resolutions are hereby **AFFIRMED** in all other respects. The

temporary restraining order issued pursuant to our resolution of July 8, 1987 is hereby lifted.

SO ORDERED.

Melencio-Herrera, (Chairman) and Paras, JJ., concur.

Padilla and Sarmiento, JJ., no part.

[1] Rollo, 13, 143.

[2] Ibid., 142.

[3] Ibid., 142

[4] Ibid., 161.

[5] Ibid., 165.

[6] Ibid., 195-199; penned by Commissioner Domingo H. Zapanta, with Commissioners Daniel M. Lucas, Jr. and Oscar N. Abella concurring.

[7] Manila Mandarin Employees Union vs. National Labor Relations Commission, et al., 154 SCRA 368 (1987); Baby Bus, Inc. vs. Minister of Labor, et al., 154 SCRA 221 (1988); Producers Bank of the Philippines vs. National Labor Relations Commission, et al., G.R. No. 76001, September 5, 1988.

[8] Remerco Garments Manufacturing vs. Minister of Labor and Employment, et al., 135 SCRA 167 (1985); Manila Doctors Hospital vs. National Labor Relations Commission, et al., 135 SCRA 262 (1985); Asiaworld Publishing House, Inc., vs. Ople, et al., 152 SCRA 219 (1987).

[9] Sec. 2, Rule VII, Revised Rules of the NLRC.

[10] Art. 278(b), now Art. 277(b), Labor Code.

[11] Rollo, 154-155.

[12] Ibid., 149, 151-153.

[13] Sec. 3(e), Rule 131, Rules of Court; People vs. Balansag, 60 Phil. 266 (1934); Cuyugan vs. Dizon, 79 Phil. 80 (1947).

[14] Rollo, 145.

[15] Ibid., 150.

[16] People vs. Valero, 112 SCRA 661 (1982).

[17] Rollo, 153.

[18] Ibid., 160.

[19] Ibid., 158.

[20] Rollo, 161-162.

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